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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/501,277	09/03/2004	Christopher Brett Ward	4046-022	5676
23440 7590 07/20/2010 GOTTLIEB RACKMAN & REISMAN PC 270 MADISON AVENUE 8TH FLOOR NEW YORK, NY 10016-0601				
EXAMINER				
PHASGE, ARUN S				
ART UNIT		PAPER NUMBER		
1795				
MAIL DATE		DELIVERY MODE		
07/20/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/501,277

Applicant(s)

WARD, CHRISTOPHER BRETT

Examiner

Arun S. Phasge

Art Unit

1795

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 April 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 29-54 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 29-54 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/CD)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 103

Claims 20-54 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Kasaai in view of Leonard of record for reasons of record.

Claim Rejections - 35 USC § 112

Claims 29-54 stand rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

As stated in the prior action, the portions of the specification do not provide adequate support for the limitations presently recited in the claims and added to the specification.

Response to Arguments

Applicants have argued and have presented a declaration from an expert in the art to support the allegation that the disclosure of the specification would have been read as a sintering step.

This is not persuasive. The declaration on the second page and section 9, states "these passages clearly would convey to one of ordinary skill in the art that the previous art to process MnO₂ ores needed to have a roasting step (read sintering step) and needed to sue relatively high grade ores ..."

The Kasaaian patent teaches there is a difference between roasting and sintering. Indeed the patent teaches the use of ores that have not been roasted, but may be sintered (see col. 1, lines 54-65). Kasaaian further teaches the different mechanisms accomplished by the roasting and sintering (see col. 2, lines 47-52). Therefore, reading the original specification's teaching of the roasting step as the newly amended sintering step is untenable.

With regard to the combination of the Kasaaian and Leonard patents, the declaration is of the opinion that one of ordinary skill in the art would not combine the patents.

An opinion declaration gives little or no patentable weight in determining the skill of the ordinary artisan. Additionally, the arguments present in the declaration are not commensurate in scope of the claims as presented.

Applicants argues that the ores disclosed in Kasaaian are contrasted with "the fundamentally different, lower-grade ore, comprised primarily of manganese dioxide (MnO_2), that is the starting material in applicant's claimed process".

There is no claim support for these limitations.

The claims merely require that the feedstock contains manganese dioxide. The Kasaaian patent uses feed stocks that would "contain manganese dioxide".

With regard to the alleged broader perspective, that both the Kasaaian patent and the Leonard patent relate to the electrolytic manganese metal technology, wherein the present claims are alleged to be directed to the electrolytic manganese dioxide technology.

Claim 29 and claims dependent from it are not directed to electrolytic manganese dioxide.

Furthermore, the step of forming the electrolytic manganese dioxide technology recited in claim 41 is the passing of the solution "to an electrowinning stage during which electrolytic manganese dioxide is deposited." This step is disclosed in the Kasaian patent, which further teaches that the dioxide is formed on the anode (col. 2, lines 32-37). Leonard likewise discloses that manganese dioxide forms on the anode as the metal forms on the cathode (see col. 2, lines 7-10).

Applicant argues that the Kasaian patent fails to disclose the recycle of the depleted electrolyte back to the leach step and would therefore not encounter the accumulated dithionate during each successive leach cycle.

The Kasaian patent discloses the use of sulfuric acid as the acid of choice, wherein the acid is readily available and used commercially (see col. 3, lines 22-25). The re-use of a valuable solute, such as sulfuric acid would have been obvious to one having ordinary skill in the art, because such reuse would make good economic and environmental sense.

The secondary patent teaches that the amount of the dithionate, whether added or generated in situ should be below the 1.0 g/l recited in the present claims.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify Kasaian by the teachings of Leonard.

One having ordinary skill in the art would have been motivated to do this modification, because the Leonard patent teaches that the amount of dithionate should be below the value as recited in the present claims in the electrolytic formation of electrolytic manganese dioxide.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arun S. Phasge whose telephone number is (571) 272-1345. The examiner can normally be reached on **MONDAY-THURSDAY, 7:30-6:00**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nam X. Nguyen can be reached on (571) 272-1342. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Arun S. Phasge/
Primary Examiner, Art Unit 1795

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